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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

NEW CINGULAR WIRELESS SERVICES, INC.,

Plaintiff and Appellant,

v.

WIRE COMM WIRELESS, INC., et al.,

Defendants;

MICHAEL F. BURKART, as Trustee in
Bankruptcy, etc.,

Respondent.

C058837

(Super. Ct. No.
06AS03658)

New Cingular Wireless Services, Inc. (Cingular) is a creditor of Wire Comm Wireless, Inc. (Wire Comm), which had been a retailer of wireless equipment and dealer of Cingular wireless services. After Wire Comm terminated its dealer agreement with Cingular, Cingular brought suit against Wire Comm and its shareholders, Richard and Shirley McCormick and their son and daughter-in-law, Tim and Renee McCormick (collectively, the McCormicks), and

Premiere Wireless Solutions (Premiere), alleging the McCormicks conspired to cause Wire Comm to fraudulently transfer "hundreds of thousands of dollars" and "most of its physical assets" to Premiere for no consideration so that they could avoid a multi-million dollar obligation to Cingular arising from Wire Comm's breach of the dealer agreement. Cingular also alleged the McCormicks "regularly used the assets of Wire Comm and Premiere for their personal uses and caused the assets to be transferred to themselves for no or inadequate consideration," and a "unity of interest and ownership exist[ed] between the McCormicks and both [Wire Comm] and Premiere such that the corporations ha[d] no distinct identity."

Shortly after Cingular's lawsuit was initiated, Wire Comm filed for chapter 7 bankruptcy protection. The bankruptcy trustee, Michael F. Burkart (trustee), entered into an agreement with the McCormicks settling the fraudulent transfer and alter ego claims for \$257,343 conditioned on, among other things, dismissal of Cingular's lawsuit against them.

Then, pursuant to Code of Civil Procedure section 368.5, the trustee filed a motion to be substituted as the plaintiff in Cingular's lawsuit against Wire Comm, the McCormicks, and Premiere. The motion stated that the claims asserted by Cingular were the property of the bankruptcy estate and, thus, the trustee "is the proper party with exclusive standing to pursue these claims." The trial court agreed and substituted the trustee as plaintiff; dismissal of the lawsuit, requested by the trustee, was entered on March 28, 2008.

Cingular appeals, principally arguing that the trustee failed to establish he possessed exclusive standing to pursue Cingular's lawsuit against the McCormicks. Cingular also claims, among other things, that Code of Civil Procedure section 368.5 was an inappropriate vehicle to challenge its standing to pursue the lawsuit; that the trial court should have confined itself to Cingular's complaint in determining whether Cingular possessed standing; that the "summary evidentiary procedure" followed by the court violated Cingular's constitutional rights to due process and a jury trial; and that, even if Cingular's complaint failed to establish standing, the court should have granted leave to amend.

We shall affirm the orders substituting the trustee as plaintiff and dismissing the lawsuit.

FACTS AND PROCEDURAL BACKGROUND

Cingular's Lawsuit

On September 25, 2006, Cingular filed a first amended complaint asserting three causes of action against Wire Comm, Premiere, and the McCormicks: fraudulent transfer, aiding and abetting a fraudulent transfer, and the disregard of corporate formalities. The complaint alleged the following:

The McCormicks were sole shareholders of Wire Comm, a dealer of wireless services and retailer of wireless equipment; Tim McCormick served as Wire Comm's president. In August 2004, Wire Comm entered into an exclusive dealer agreement with AT&T Wireless Services (AT&T). When AT&T was acquired by Cingular about three months later, Wire Comm became an exclusive dealer of Cingular wireless services pursuant to the same agreement.

The agreement obligated Cingular to pay Wire Comm certain commissions for "activating new customers, subscribing customers to additional features, renewing existing customers, and similar activities." Disputes arose as to a number of Wire Comm's claimed commissions; but to prevent Wire Comm from experiencing a cash flow problem while the disputes were resolved, Cingular paid Wire Comm "good faith advances totaling \$934,797.47." After a "reconciliation procedure" was completed in June 2005, it was determined that Wire Comm owed Cingular \$864,192.47. This "clean up" amount equaled the \$934,797.47 advanced by Cingular in good faith, offset by \$70,605.00 in payable claims.

On June 12, 2005, with knowledge that Cingular initiated this "clean-up process" and that "Cingular intended at the conclusion of the process to recoup the good faith advances made to Wire Comm during the transition period," Wire Comm informed Cingular that Wire Comm would be terminating the agreement "for cause if Cingular did not cure certain alleged breaches [of the agreement] within thirty days." On July 19, 2005, with knowledge Cingular was not in breach of the agreement, Wire Comm terminated the agreement, purportedly for cause, "as part of a scheme to hinder, delay, and defraud Cingular" from recovering the aforementioned good faith advances, as well as an outstanding balance of \$202,103.23 in mobile phones and other equipment purchased by Wire Comm prior to termination.

Following Wire Comm's breach of the dealer agreement, Cingular inadvertently paid Wire Comm an additional \$54,530.00 in commissions based on activity that occurred after termination of the agreement--consequently raising Wire Comm's total outstanding debt to Cingular

to \$1,120,825.70. Cingular also asserted that, in addition to this outstanding debt, Wire Comm was liable for \$1,828,887.47 in damages caused by Wire Comm's breach of the agreement.¹

As to its cause of action for fraudulent transfer (count 1), Cingular alleged that, around the time of Wire Comm's termination of its agreement with Cingular, Wire Comm "transferred hundreds of thousands of dollars" to Premiere, another corporation controlled by the McCormicks, for no consideration. "Wire Comm also transferred to Premiere for no consideration most of its physical assets, such as kiosks, cash registers, displays, and its inventory of accessories." And, around the same time, Premiere entered into a dealer agreement with Verizon Wireless and continued Wire Comm's business under the new name. Cingular also alleged that both Wire Comm and Premiere "entered [into] transactions transferring property and incurring obligations to third parties as the result of which the McCormicks received property and other benefits"; that both corporations "paid salaries and other sums to Renee, Richard, and Shirley McCormick that were unreasonably large in relationship to the services performed for the corporations"; and that the McCormicks participated in these transactions with the "intent to hinder, delay, and defraud" Cingular from recovering the amounts owed by Wire Comm. Cingular further

¹ In September 2005, Wire Comm initiated an arbitration proceeding against Cingular, claiming that Cingular breached the agreement by failing to report certain information to Wire Comm and by not paying certain disputed commissions. Cingular counterclaimed against Wire Comm for the outstanding debt of \$1,120,825.70 and for \$1,828,887.47 "for damages caused by Wire Comm's wrongful termination" of the agreement.

alleged that Wire Comm became insolvent as a result of these fraudulent transfers, thus injuring Cingular.

Cingular also alleged each defendant aided and abetted the fraudulent transfers (count 2), and the McCormicks so disregarded corporate formalities that a "unity of interest and ownership exist[ed] between the McCormicks and both [Wire Comm] and Premiere such that the corporations ha[d] no distinct identity" (count 3).

Through this complaint, Cingular sought to avoid all allegedly fraudulent transfers "to the extent necessary to satisfy Cingular's claims against Wire Comm in the total sum of \$2,949,713.17." Cingular also sought to attach all property so transferred and to enjoin defendants from "further disposition of said property," and from "incurring further obligations or making further transfers that would hinder, delay, or defraud Cingular from recovering the amounts owed by Wire Comm." In addition, Cingular sought a finding that the McCormicks are alter egos of Wire Comm and Premiere and, therefore, the McCormicks and Premiere are liable for all debts and obligations of Wire Comm. The complaint asked for general and punitive damages, as well as costs and attorney fees.

Bankruptcy and Settlement With the McCormicks

In December 2006, Wire Comm petitioned for chapter 7 bankruptcy protection. On August 6, 2007, the trustee entered into an agreement with the McCormicks settling the fraudulent transfer and alter ego claims for \$257,343, conditioned on the dismissal of Cingular's lawsuit against them. The settlement agreement allowed Tim and Richard McCormick's claims (of \$429,099 and \$199,400, respectively) against the bankruptcy estate, and required the McCormicks to confirm

the physical address of Brian McKush, an individual the trustee desired to sue on behalf of the estate, but who had previously eluded service of process. The bankruptcy court approved the settlement on October 5, 2007, and the United States District Court for the Eastern District of California affirmed. (*New Cingular Wireless Services, Inc. v. McCormick* (E.D.Cal. 2008) 2008 WL 4283526.)

Motion for Substitution and Dismissal of the Lawsuit

On October 1, 2007, the trustee brought a motion in Sacramento County Superior Court to be substituted as plaintiff in Cingular's lawsuit, pursuant to section 368.5 of the Code of Civil Procedure. The motion stated that the claims asserted by Cingular were the property of the bankruptcy estate and, thus, the trustee "is the proper party with exclusive standing to pursue these claims."

Cingular opposed the motion, arguing that Cingular's claims did not belong to the bankruptcy estate because "the McCormicks' plan was aimed at harming Cingular while protecting Wire Comm's other creditors." Cingular asserted the McCormicks transferred Wire Comm's assets to Premiere solely to defraud Cingular, and "all other creditors benefited from the transfers to Premiere" (*italics omitted*) because these transfers "enabled the McCormicks [to] continue paying them--with funds that might otherwise have been used to satisfy Wire Comm's multi-million dollar debt to Cingular." Thus, Cingular argued, "the McCormicks' transfers from Wire Comm to themselves and Premiere resulted in particularized injury to Cingular and, by design, resulted in no harm to other creditors, causes of action based on those transfers are personal to Cingular, and the Trustee has no standing to pursue them."

Cingular acknowledged that another creditor of Wire Comm-- Macerich Fresno Limited Partnership (Macerich), Wire Comm's landlord at the Fashion Fair Mall--was also owed a substantial amount of money (\$190,984.51). But Cingular argued that Macerich was nevertheless benefitted by the McCormicks' fraudulent scheme because Premiere continued to pay Macerich "over \$120,000 in lease payments in the ten months after Wire Comm ceased operations." Cingular also acknowledged that Wire Comm owed smaller amounts of money to additional creditors, such as Pacific Gas and Electric Company (\$1,380.27), and Dell Financial Services, L.P. (\$503.46).

On November 4, 2007, the trial court issued a tentative ruling granting the trustee's motion to be substituted as the plaintiff in Cingular's lawsuit. The court correctly noted "the bankruptcy trustee has standing to assert general claims, [i.e.,] those claims that could be asserted by any creditor," but does not have standing "to assert claims that are the personal claims of a creditor. . . . To determine whether a claim is general or personal to the creditor, the court must look to the injury for which relief is sought and consider whether it is peculiar and personal to the creditor or general and common to the corporation and [all] creditors." It then concluded that Cingular's claims were general and thus were property of the bankruptcy estate. In so ruling, the court acknowledged that Cingular asserted "defendants continued to pay Wire Comm's other creditors after its assets were transferred to Premier[e], but refused to pay Cingular," and that this made Cingular's claim larger in size than the claims of Wire Comm's other creditors. However, the court explained, this did not make Cingular's claim "different

in nature" from the claims that could have been asserted by any of Wire Comm's creditors.

After oral argument on the motion, the trial court affirmed its tentative ruling and ordered that the trustee be substituted as plaintiff in place of Cingular. Thereafter, dismissal of the lawsuit was entered, as requested by the trustee.

DISCUSSION

I

Cingular's principal argument on appeal is that the trustee failed to establish he possessed exclusive standing to pursue Cingular's fraudulent transfer and alter ego causes of action. We disagree.

Once a corporation files for chapter 7 bankruptcy protection, only the trustee has standing to "collect and reduce to money the property of the estate." (11 U.S.C. § 704(a)(1).) Property of the estate is defined as "all legal or equitable interests of the debtor in property as of the commencement of the case" (11 U.S.C. § 541(a)(1)), and it includes all causes of action that the debtor might have. (*United States v. Whiting Pools, Inc.* (1983) 462 U.S. 198, 205, fn. 9 [76 L.Ed.2d 515, 522].) Accordingly, "a right of action which is property of the debtor becomes property of the estate," and "the right to assert the claim is vested in the trustee." (*In re Folks* (Bankr. 9th Cir. 1997) 211 B.R. 378, 384; *In re Davey Roofing, Inc.* (C.D.Cal. 1994) 167 B.R. 604, 606.)

The question of whether the fraudulent transfer and alter ego claims asserted in this case are property of the estate or belong to Cingular is a question of state law. (*In re Folks, supra*, 211 B.R.

at p. 384; see also *Koch Refining v. Farmers Union Cent. Exchange, Inc.* (7th Cir. 1987) 831 F.2d 1339, 1344.)

In California, the "'trustee has the right to bring any action in which the debtor has an interest' because this is property of the estate, the trustee is acting to benefit the debtor's estate, and is ultimately benefitting the estate's creditors upon distribution." (*In re Folks, supra*, 211 B.R. at p. 386.) However, "the bankruptcy trustee 'may not enforce rights of action which belong to the creditors individually because they are not rights in which the bankrupt claims an interest and are not assets of the estate in bankruptcy.' [Citation.] The trustee's representation of the creditors is limited to 'matters relating to marshaling, preserving or otherwise administering the assets of the estate in bankruptcy.'" (*Id.* at p. 385, quoting *Stodd v. Goldberger* (1977) 73 Cal.App.3d 827, 835.) Thus, "trustees are prohibited from asserting personal claims on behalf of creditors where the estate has no interest in the claims." (*In re Folks, supra*, 211 B.R. at pp. 386-387.)

"'A cause of action is "personal" if the claimant himself is harmed and no other claimant or creditor has an interest in the cause.' [Citation.] A general claim exists 'if the liability is to all creditors of the corporation without regard to the personal dealings between such officers and such creditors.' [Citation.] 'If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim, and the creditors are bound by the outcome of the trustee's action.' [Citation.]" (*In re Folks, supra*, 211 B.R. at p. 387; see also

Kalb, Voorhis & Co. v. American Financial Corp. (2d Cir. 1993) 8 F.3d 130, 132.) In short, while the trustee is prohibited from asserting a personal claim on behalf of a creditor where no other claimant or creditor has an interest in the claim, a trustee has exclusive standing to assert a general claim that could be brought by any claimant or creditor of the debtor. (*In re Folks, supra*, 211 B.R. at pp. 386-387.)

Here, Cingular asserted fraudulent transfer and alter ego causes of action against Wire Comm, the McCormicks, and Premiere. As we will explain, these are general claims, with no specific and particularized injury to Cingular.

With respect to the alter ego cause of action, if Cingular's allegations are true, then the McCormicks and Premiere could be held liable for all of Wire Comm's debts. Indeed, Cingular's complaint asked the trial court for a declaration that the McCormicks are alter egos of Wire Comm and Premiere and, thus, the McCormicks and Premiere are liable for "*all debts and obligations of Wire Comm,*" not just the debt to Cingular. (*Italics added.*) Therefore, the trustee has exclusive standing to bring this alter ego claim on behalf of Wire Comm and all of its creditors because the claim is property of the estate, not the individual property of Cingular. (See *In re Folks, supra*, 211 B.R. at p. 388; *In re Davey Roofing, Inc., supra*, 167 B.R. at p. 608 ["the estate is the proper party to assert an alter ego claim, and creditors are bound by the outcome of the estate's action, 'if the debtor's claim is a general one, with no particularized injury arising from it, and if the claim could have been brought by any creditor of the debtor'"].)

The same reasoning applies with equal force to the fraudulent transfer cause of action. If, as Cingular alleges, the McCormicks conspired to transfer Wire Comm's assets to Premiere in order to prevent Cingular from collecting on its debt, then these transfers can be avoided, not just by Cingular, but by any other creditor who was injured by the fraudulent transfers. Indeed, section 544 of title 11 of the United States Code explicitly provides that a bankruptcy trustee may avoid fraudulent transfers of the debtor's property. (*In re United Energy Corp.* (Bankr. 9th Cir. 1989) 102 B.R. 757, 760 ["bankruptcy trustee can avoid fraudulent transfers pursuant to state law and/or provisions of the Bankruptcy Code"].) Cingular does not dispute that other creditors, the largest of whom was Macerich with an outstanding debt of \$190,984.51, remained unpaid following the fraudulent transfers which bankrupted Wire Comm.

Nevertheless, Cingular argues that these other creditors were actually benefitted by the McCormicks' fraudulent scheme because Premiere continued to pay them following the transfers. We are not persuaded. While Cingular asserts that Macerich was paid "over \$120,000 in lease payments in the ten months after Wire Comm ceased operations," this does not mean Macerich was not injured by the transfers. If true, all this means is that Macerich's debt was paid down following the fraudulent transfers, while Cingular's debt was not. Thus, as the trial court correctly concluded, Cingular's fraudulent transfer claim differed only in size from that which could have been asserted by any of Wire Comm's other creditors. Cingular cites no authority, and we have not discovered any, that

would allow it standing to pursue this fraudulent transfer claim--a claim that could have been brought by any other creditor--simply because Cingular suffered the greatest monetary injury.

Because Cingular's fraudulent transfer and alter ego causes of action are general claims that could have been asserted by any of Wire Comm's creditors, they are the property of the bankruptcy estate with the trustee having exclusive standing to pursue them.

II

Cingular asserts that Code of Civil Procedure section 368.5 was an inappropriate vehicle to challenge its standing to pursue the lawsuit. (Further section references are to the Code of Civil Procedure unless otherwise specified.) Cingular has forfeited this contention by failing to assert it in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2; *People v. Scott* (1994) 9 Cal.4th 331, 351.) Indeed, at the hearing on the motion, Cingular admitted that the trustee had filed "a proper motion" under section 368.5 to be substituted in as plaintiff in the lawsuit.

In any event, the contention lacks merit. Section 367 states: "Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." Section 368.5 provides: "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

As we have explained, when Wire Comm filed for bankruptcy, the fraudulent transfer and alter ego causes of action asserted by Cingular passed to the bankruptcy estate by operation of law. At that point, Cingular was no longer the real party in interest within the meaning of section 367 and, therefore, could no longer prosecute the action. The plain language of section 368.5 allowed the trial court to either let the trustee prosecute the action in Cingular's name or substitute the trustee as plaintiff in the action. (§ 368.5.)

We disagree with Cingular's assertion that the trustee "should have been required to file a complaint in intervention before challenging Cingular's standing." *Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4th 1075 is instructive. There, debtors appealed the dismissal of their lawsuit seeking to set aside a foreclosure sale following the conversion of their bankruptcy from chapter 11 to chapter 7. (*Id.* at pp. 1077-1078.) The appeal was dismissed because standing to maintain the lawsuit became vested in the trustee by operation of law when the matter was converted to chapter 7. (*Id.* at p. 1079.) Disagreeing with cases holding a "debtor may continue to prosecute the cause of action unless the trustee takes affirmative steps to intervene" (see, e.g., *Kaley v. Catalina Yachts* (1986) 187 Cal.App.3d 1187, 1193-1196), the Court of Appeal concluded "that the debtor must take affirmative steps to comply with section 554 [of the Bankruptcy Code]² concerning abandonment" and that, "[u]ntil

² Section 554 of title 11 of the United States Code provides: "(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that

the debtor secures [the trustee's] abandonment of the claim, the debtor lacks standing to pursue it." (*Bostanian v. Liberty Savings Bank, supra*, 52 Cal.App.4th at p. 1083.) The court explained: "[Code of Civil Procedure] [s]ection 368.5 does not confer standing on a party who has *no right to assert* the claim. [Citation.] . . . A chapter 7 trustee may be able to continue to prosecute an action in the name of the debtor pursuant to Code of Civil Procedure section 368.5; however, . . . the *debtor* may not pursue the cause of action on his or her own *unless* the cause of action has been abandoned by the trustee pursuant to section 554 [of the Bankruptcy Code]. [Citation.] Stated differently, a bankruptcy *trustee* could continue an action in the name of the debtor under Code of Civil Procedure section 368.5. However, it is the *trustee* who must prosecute the action, not the *debtor*." (*Ibid.*) Accordingly, the moment the action becomes property of the bankruptcy estate, the trustee possesses exclusive standing to pursue it and need not file a complaint in intervention in order to assert such standing.

Here, the fraudulent transfer and alter ego claims became the property of the bankruptcy estate at the moment Wire Comm filed for

is of inconsequential value and benefit to the estate. [¶] (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. [¶] (c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title. [¶] (d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate."

chapter 7 bankruptcy protection. Thus, the trustee was vested with exclusive standing to pursue the claims as of that date and, not having secured the trustee's abandonment of the claims, Cingular lacked standing to pursue them.

In a related challenge to the propriety of using section 368.5, Cingular asserts this statute "contemplates a routine, voluntary transfer, and does not apply when the party to be substituted opposes the substitution." Cingular attempts to support this assertion with the inapposite case of *Hollaway v. Scripps Memorial Hospital* (1980) 111 Cal.App.3d 719, which explained that former rule 48 of the California Rules of Court--allowing the trial court to issue an order substituting a party during the pendency of an appeal--did not authorize the trial court to interfere with the jurisdiction of the Court of Appeal by removing a guardian ad litem "based on the trial court's perception of a conflict of interest which the court believed was shown by the very taking of the appeal." (*Id.* at p. 724, fn. 1.) Instead, the rule authorized the trial court to order only "routine substitutions of parties pending appeal, made necessary by an objective event such as death of a party or transfer of his interest." (*Ibid.*) This case does not stand for the proposition that a trial court cannot order the substitution of a party pursuant to section 368.5 when the substitution motion is opposed by the party to be substituted. Cases are not authority for propositions not decided. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620; *Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 881.) Moreover, regardless of the fact the substitution in this case was opposed by Cingular, it was a routine

substitution made necessary by an objective event, i.e., Wire Comm's filing for chapter 7 bankruptcy protection, which automatically transferred Cingular's lawsuit to the bankruptcy estate.

III

Cingular further claims the trial court should have confined itself to the pleadings in determining whether the trustee had standing to pursue the lawsuit. According to Cingular, because the trustee did not file a complaint in intervention, "the only legitimate basis for the trial court to decide whether the [t]rustee had standing was Cingular's complaint." Not so.

Contrary to Cingular's assertion in the trial court, a motion pursuant to section 368.5 is not "the equivalent of a demurrer." As already indicated, Cingular's interest in the lawsuit transferred to the bankruptcy estate by operation of law the moment Wire Comm filed for chapter 7 bankruptcy protection. Section 368.5 provided the transferee with the option to allow the proceeding to continue in the name of the original party, or to move for substitution as the plaintiff. (§ 368.5.) The trustee chose the latter option. Although the trustee could have applied ex parte for substitution, the trustee followed the "better practice" of providing notice to Cingular (see *MacMillan Petroleum Corp. v. Griffin* (1950) 99 Cal.App.2d 523, 526), which allowed Cingular to file an opposition attaching 19 exhibits designed to convince the trial court that it suffered particularized injury.

The trustee's motion was a motion by real party in interest to be substituted into the lawsuit in place of the original party, whose interest had transferred to the bankruptcy estate by operation

of law. It was not a demurrer, which challenges the sufficiency of the complaint to state a cause of action. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Nor can Cingular complain about the fact that, in ruling on the motion, the trial court reviewed evidence that Cingular produced. (See, e.g., *Jentick v. Pacific Gas & Elec. Co.* (1941) 18 Cal.2d 117, 121; *Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1290.)

IV

We also reject Cingular's related contention that the "summary evidentiary procedure" followed by the court violated Cingular's constitutional rights to due process and a jury trial. In making this argument, Cingular relies heavily on *People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409. In that case, a forfeiture action, the Court of Appeal held that, where "the determination of a claimant's standing to challenge the government's forfeiture turns on disputed facts or credibility determinations, and the issue of the claimant's ownership and the merits of the forfeiture action are inextricably intertwined, the jury must make factual findings on the issue of the claimant's ownership or interest in the seized property before the trial court decides whether the facts, as determined by the jury, confer standing as a matter of law." (*Id.* at p. 424.)

Here, the determination of Cingular's standing to pursue the fraudulent transfer and alter ego causes of action did not turn on disputed facts or credibility determinations, but rather on the nature of the claims asserted by Cingular. If personal to Cingular, then Cingular had standing to pursue them; if general in nature, then the trustee had exclusive standing to pursue them on behalf of

the bankruptcy estate. This was a legal question, which the trial court correctly resolved in favor of the trustee based on Cingular's complaint and the evidence proffered by Cingular at the hearing.

(*IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291, 1299 [standing is a question of law].) Cingular's constitutional rights to due process and a jury trial were not violated.

V

Cingular's additional assertion that the trial court lacked jurisdiction to dismiss the lawsuit without joining Cingular as a party is also without merit. Once Wire Comm filed for chapter 7 bankruptcy protection, Cingular's fraudulent transfer and alter ego causes of action became the property of the bankruptcy estate. Without standing to pursue the lawsuit, Cingular cannot legitimately claim to be an "indispensable party" whose "interests, rights, or duties [were] affected" by its dismissal. (*Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521.)

VI

We also reject Cingular's final argument that, even if the complaint failed to establish standing, the trial court should have granted leave to amend because Cingular showed "the complaint could have been amended to show particularized injury" based on the evidence Cingular produced in opposition to the substitution motion "establishing that no other creditor was harmed by the transfer of cash and assets to Premiere or the lies about Premiere's ownership and management." We have already rejected Cingular's assertion that Wire Comm's other creditors "benefited from the transfers to

Premiere, because they enabled the McCormicks [to] continue paying them--with funds that might otherwise have been used to satisfy Wire Comm's multi-million dollar debt to Cingular." We need not belabor the point here. Suffice it to say Cingular made no showing that amending its complaint would have cured its lack of standing to pursue the lawsuit. (*Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1081.)

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

SCOTLAND, P.J.

We concur:

NICHOLSON, J.

RAYE, J.